

EXHIBIT 1

DECLARATION OF MATTHEW B. HAYES

I, MATTHEW B. HAYES, declare as follows:

1. I am an attorney licensed to practice before this Court. My law partner, Kye D. Pawlenko, and I are counsel of record in this lawsuit for Plaintiff Deborah Rodriguez ("Plaintiff"). I have personal knowledge of the facts set forth herein based on the investigation and discovery conducted in this case, and could and would testify competently thereto if called as a witness.

2. My office has litigated this lawsuit on a purely contingency basis. As detailed below, over the past two years my firm has advanced over 800 hours of attorney time and over \$17,000 in expenses with no assurance of receiving any compensation for our time or reimbursement of our costs.

Qualification, Experience, and Applicable Hourly Rates

3. I have been practicing law for 24 years and Mr. Pawlenko has been practicing law for 23 years.

4. After graduating from UCLA School of Law in 2001, I completed a one-year judicial clerkship with Justice Alex Bryner of the Alaska Supreme Court.

5. Prior to starting my own law firm in 2011, I practiced employment defense at Latham & Watkins, Littler Mendelson, and Greenberg Traurig, where I handled, among other matters, ERISA compliance and litigation. Since opening my own law firm over fourteen years ago, I have represented employees in ERISA litigation as well as numerous other types of employment litigation.

6. Mr. Pawlenko graduated magna cum laude from Tulane University School of Law in 2002 and earned an LL.M in Labor & Employment Law from New York University School of Law in 2005. Mr. Pawlenko clerked for Judge Rosemary M. Collyer of the United States District Court for the District of Columbia, where he worked on multiple ERISA cases.

1 7. Prior to forming Hayes Pawlenko LLP in 2012, Mr. Pawlenko practiced
 2 at Latham & Watkins, Jones Day, and the National Labor Relations Board. While at
 3 Latham & Watkins, Mr. Pawlenko handled ERISA matters.

4 8. My partner and I have successfully handled representative ERISA
 5 litigation through judgment on behalf of plan participants, *see Villalobos v. Downey*
 6 *Griding Co.*, 2021 6068828, at *1-*2 (C.D. Nov. 18, 2021) (awarding damages to the
 7 plan and its participants after finding ERISA violations), and are currently lead
 8 counsel in numerous ERISA representative and/or class actions concerning the
 9 allocation of forfeitures, a novel legal issue pioneered by our firm, *see Dimou v.*
 10 *Thermo Fisher Scientific Inc., et al.*, U.S. Dist. Ct. S.D. Cal. Case No. 3:23-cv-1732-
 11 BJC-JLB (filed Sept. 19, 2023); *Perez-Cruet v. Qualcomm Incorporated, et al.*, U.S.
 12 Dist. Ct. S.D. Cal. Case No. 3:23-cv-01890-AGS-MMP (filed Oct. 16, 2023); *McManus*
 13 *v. The Clorox Co., et al.*, U.S. Dist. Ct. N.D. Cal. Case No. 4:23-cv-05325-YGR (filed
 14 Oct. 18, 2023); *Hutchins v. HP Inc.*, U.S. Dist. Ct. N.D. Cal. Case No. 5:23-cv-05875-
 15 BLF (Nov. 14, 2023); *Barragan v. Honeywell Int'l Inc., et al.*, U.S. Dist. Ct. N.D. Cal.
 16 Case No. 2:24-cv-04529-ER-JRA (filed Feb. 13, 2024); *Prattico v. Mattel, Inc.*, U.S.
 17 Dist. Ct. C.D. Cal. Case No. 2:24-cv-02624-FMO-JPR (filed Apr. 1, 2024); *Cain v.*
 18 *Siemens Corp.*, U.S. Dist. Ct. D.N.J. Case No. 2:24-cv-08730-CCC-MAH (filed Aug.
 19 23, 2024); *Mowry v. Albertsons Co., Inc.*, U.S. Dist. Ct. Dist. Idaho Case No. 1:25-cv-
 20 00062 (filed Oct. 21, 2024).

21 9. My partner and I have secured orders granting class certification and
 22 appointing us as class counsel for employees in numerous contested motions for class
 23 certification in federal and state courts throughout California, including in *Stickles v.*
 24 *Atria Senior Living, Inc.*, 2021 WL 6117702 (N.D. Cal. Dec. 27, 2021); *Dalchau v.*
 25 *Fastaff, LLC*, 2018 WL 1709925 (N.D. Cal. Apr. 9, 2018); *Howell v. Advantage RN,*
 26 *LLC*, 2018 WL 3437123 (S.D. Cal. July 17, 2018); *Clarke v. AMN Services, LLC*, 2017
 27 WL 6942755 (C.D. Cal. Oct. 12, 2017); *Wright v. Renzenberger, Inc.*, 2017 WL
 28 9831398 (C.D. Cal. Sept. 30, 2017); *Taylor v. Shippers Transp. Express, Inc.*, 2014

1 WL 12347060 (C.D. Cal. Mar. 10, 2014); *Kaanaana, et al. v. Barrett Business*
2 *Services, Inc. et al.*, Los Angeles Superior Court Case No. BC496090; *Simpson v.*
3 *Prometheus Global Media, LCC*, Los Angeles Superior Court Case No. BC 522638;
4 *Rojas v. Rice Field Corp., et al.*, Los Angeles Superior Court Case No. BC549935;
5 *Mata v. Regency Park Senior Living, Inc.*, Los Angeles Superior Court Case No.
6 BC493461; *Salupen, et al. v. Dupont Residential Care, Inc., et al.*, Orange County
7 Superior Court Case No. 30-2014-00725300-CU-OE-CXC; *Colleran v. Sharp Medical*
8 *Staffing, LLC*, Alameda Superior Court Case No. 22CV014447.

9 10. Mr. Pawlenko and I have also successfully litigated a class action
10 through trial and secured appellate rulings in favor of certified employee classes from
11 both the California Supreme Court and the Ninth Circuit. *See Kaanaana v. Barrett*
12 *Business Servs., Inc.*, 11 Cal. 5th 158 (2021) (holding, in post-trial appeal, that
13 certified class of belt sorters at county refuse facilities were entitled to prevailing
14 wage rates); *Clarke v. AMN Servs., LLC*, 987 F.3d 848 (9th Cir. 2021) (reversing trial
15 court order granting summary judgment in favor of employer and remanding with
16 instruction to grant partial summary judgment in favor of certified class of employees
17 in overtime action). The *Clarke* action ultimately resulted in a settlement of \$59.99
18 million for a class of 10,269 individuals.

19 11. Mr. Pawlenko and I have likewise secured summary judgment rulings
20 in favor of multiple certified classes. *See Stickles v. Atria Senior Living, Inc.*, 642 F.
21 Supp. 3d 1104 (N.D. Cal. 2022); *Carlino v. CHG Medical Staffing, Inc.*, 460 F. Supp.
22 3d 959 (E.D. Cal. 2020); *Musgrove v. Jackson Nurse Professionals, LLC*, 2020 WL
23 6804510 (C.D. Cal. Sept. 27, 2020); *Howell v. Advantage RN, LLC*, 401 F. Supp. 3d
24 1078 (S.D. Cal. 2019); *Dittman v. Medical Solutions, L.L.C.*, 2019WL 4302752 (E.D.
25 Cal. Sept. 11, 2019); *Wright v. Renzenberger, Inc.*, 2018 WL 1975076 (C.D. Cal. Mar.
26 8, 2018); *Taylor v. Shippers Transport Exp., Inc.*, 2014 WL 7499046 (C.D. Cal. Sept.
27 30, 2014).

1 12. For purposes of performing a lodestar cross-check in connection with the
2 present attorney fee application, we are requesting the rate of \$700 per hour for my
3 time and \$650 per hour for Mr. Pawlenko's time.

4 13. In 2021, *four years ago*, this district specifically found "hourly rates" of
5 \$650 for myself and \$600 for Mr. Pawlenko to be "commensurate with [our]
6 experience and with the legal market in this district" at that time. *Hubbard v. RCM*
7 *Technologies (USA), Inc.*, 2021 WL 5016058, * 5 (N.D. Cal. Oct. 28, 2021) (Gonzalez
8 Rogers, J.); *see also, e.g., Taylor v. Shippers Transport Express, Inc.*, U.S. Dist. Court,
9 Central District CA Case No. 2:13-cv-02092-BRO-PLA (utilizing rates of \$650 and
10 \$600 for me and Mr. Pawlenko, respectively, for lodestar cross-check); *Dalchau v.*
11 *Fastaff, LLC, et al.*, U.S. Dist. Court, Northern District CA Case No. 3:17-cv-01584-
12 WHO (same); *Howell v. Advantage RN, LLC*, U.S. Dist. Court, Southern District CA
13 Case No. 17cv883-JLS (same); *Pruitt v. Trustaff Travel Nurses, LLC*, Contra Costa
14 County Superior Court Case No. C17-01930 (same); *Benn, et al. v. Grifols Biologicals,*
15 *Inc.*, Los Angeles County Superior Court Case No. BC 638756 (same); *Iglesias v.*
16 *Ken's Spray Equipment, Inc.*, Los Angeles County Superior Court Case No. BC552162
17 (same); *Howard v. Total Safety U.S., Inc., et al.*, Los Angeles County Superior Court
18 Case No. BC502752 (same); *Salcido v. West Coast Arborists, Inc.*, Los Angeles County
19 Superior Court Case No. BC540178 (same); *Mata v. Regency Park Senior Living, Inc.*,
20 Los Angeles County Superior Court Case No. 493461 (same); *Salupen, et al. v.*
21 *Dupont Residential Care, Inc., et al.*, Orange County Superior Court Case No. 30-
22 2014-00725300 (same).

23 14. The currently requested rates represent an increase of just \$50 per
24 attorney (under 8%) from the rates approved in 2021 to account for an additional four
25 years of experience and inflation.

26 15. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt
27 from the 2024 Real Rate Report: An Analysis of Law Firm Rates, Trends, and
28 Practices, Wolters Kluwer (2024 ed.).

Hours Worked on Behalf of the Class

16. Throughout this litigation, my firm has kept contemporaneous records of hours worked and tasks performed. My office utilized “Time59” billing software to record hours worked. Submitted herewith as Exhibit 3 are both a total hours summary report and daily time records generated by “Time59.”

17. My firm has, to date, expended a total of 818.80 attorney hours litigating the present lawsuit, including 527.60 hours worked by me and 291.20 hours worked by Mr. Pawlenko. This figure excludes time spent preparing the present motion. This figure also does not include the additional time that will be incurred in responding to class inquiries regarding the settlement over the next two months, moving for final approval of the settlement, and attending the final approval hearing, which will likely entail at least an additional 25 hours of attorney time.

18. As further detailed in the daily time records submitted as Exhibit 3, the attorney time dedicated to litigating this action over the past two years has included, among other things, preparation of pleadings, extensive research into novel legal issues, successfully opposing a motion to dismiss, conducting extensive written discovery, meeting and conferring about discovery disputes, analyzing over 7,000 pages of discovery documents, attending court hearings, preparing mediation briefing and damage models, participating in mediation sessions, protracted settlement negotiations, and moving for approval of the settlement.

Lodestar Cross-Check and Multiplier

19. Multiplying the attorney hours worked, to date, on behalf of the class by the applicable hourly rates results in the following unadorned lodestar for my law firm:

<u>Attorney</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Amount</u>
Matthew B. Hayes	\$700	527.60	\$369,320
Kye D. Pawlenko	\$650	291.20	\$189,280
Total:		818.80	\$558,600

1 20. My law firm is seeking an attorney fee award of \$647,155.64, which
2 requires a multiplier of less than 1.16 to the above lodestar.

3 21. I respectfully submit that a fee award amounting to just under one third
4 (1/3) of the gross settlement amount and a multiplier of less than 1.16 to my law
5 firm's lodestar is reasonable based on multiple factors.

6 22. *First*, the Settlement achieved a substantial benefit for the class. The
7 Settlement recovers approximately 63% of the Plan expenses charged to participants
8 that Plaintiff alleges should have been paid with forfeitures. Dkt. 1 (Compl. ¶¶ 21-
9 24). All individuals who participated in the Plan and had Plan expenses charged to
10 their accounts during the class period will automatically receive a payment without
11 having to make a claim. Dkt. 76-3 (Settlement, Exh. B – Plan of Allocation).

12 23. *Second*, the recovery of \$1,995,000 for the class was secured despite
13 significant risks. Plaintiff's theory of recovery – that forfeitures should have been
14 used to cover Plan expenses rather than offset employer contributions – is based on
15 “a novel interpretation of ERISA on which there is no binding authority.” *McManus*
16 *v. Clorox Co.*, 2025 WL 732087, * 1 (N.D. Cal. Mar. 3, 2025). As detailed in the brief
17 filed concurrently herewith, the majority of district courts to address the theory of
18 recovery in this action have, thus far, rejected it as a matter of law and, therefore,
19 granted motions to dismiss the claims asserted here. An appeal to the Ninth Circuit
20 concerning the viability of Plaintiff's theory of recovery is currently pending in
21 *Hutchins v. HP, Inc.*, No. 25-826 (9th Cir. Feb. 7, 2025).

22 24. *Third*, given that this action presented novel legal issues that were
23 vigorously contested by Defendants, I respectfully submit that a significant level of
24 skill and extensive work were required to defeat the motion to dismiss, obtain the
25 necessary discovery, and ultimately negotiate a favorable settlement.

26 25. *Fourth*, our law firm has litigated this lawsuit on a purely contingency
27 basis for the past two years, advancing over 800 hours of attorney time with no
28 guarantee of any recovery whatsoever.

